

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000727

01/28/2004

HONORABLE MICHAEL D. JONES

CLERK OF THE COURT
P. M. Espinoza
Deputy

FILED: _____

GREGORY STEVEN BONANNO

DARROW K SOLL

v.

ARIZONA STATE DEPARTMENT OF
TRANSPORATION MVD
BARRY A MCNAUGHTON
ROSARIO J CIRINCIONE

JOHN C DUTTON

OFFICE OF ADMINISTRATIVE
HEARINGS

MINUTE ENTRY

Pursuant to A.R.S §12-910(e) this court may review administrative decisions in special actions and proceedings in which the State is a party:

The court may affirm, reverse, modify or vacate and remand the agency action. The court shall affirm the agency action unless after reviewing the administrative record and supplementing evidence presented at the evidentiary hearing the court concludes that the action is not supported by substantial evidence, is contrary to law, is arbitrary and capricious or is an abuse of discretion.

The scope of review of an agency determination under administrative review places the burden upon the Plaintiff to demonstrate that the agency's decision was arbitrary, capricious, or involved an abuse of discretion.¹ The reviewing court may not substitute its own discretion for that exercised by the agency,² nor may it act as the trier of fact,³ but must only determine if there

¹ *Sundown Imports, Inc. v. Ariz. Dept. of Transp.*, 115 Ariz. 428, 431, 565 P.2d 1289, 1292 (App. 1977);
Klomp v. Ariz. Dept. of Economic Security, 125 Ariz. 556, 611 P.2d 560 (App. 1980).

² *Ariz. Dept. of Economic Security v. Lidback*, 26 Ariz. App. 143, 145, 546 P.2d 1152, 1154 (1976).

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is any competent evidence to sustain the decision.⁴ This court may not function as "super agency" and substitute its own judgment for that of the agency where factual questions and agency expertise are involved.⁵

This matter has been under advisement since the time of oral argument on December 3, 2003. This decision is made within sixty (60) days are required by Rule 9.9, Maricopa County Superior Court Local Rules of Practice. This Court has considered and reviewed the record of the proceedings from the Arizona Dept. of Transportation, the exhibits made of record, and the memoranda and oral arguments of counsel.

The only issue presented in this case is whether the administrative law judge, the Honorable Rosario (Roy) J. Cirincione (hereinafter referred to as "ALJ"), erred in his legal determination that cancellation of Plaintiff's driving privileges should be sustained based upon the revocation of Plaintiff's driving privileges by the State of Florida.

The record reflects that on March 10, 1999, Plaintiff Gregory Steven Bonanno, surrendered his Florida driver's license and obtained an Arizona driver's license. Thereafter on October 18, 2000, the State of Florida revoked Plaintiff's driving privileges because of numerous traffic offenses that had occurred within that state. In Arizona, Plaintiff's driver's license was suspended for twelve (12) months commencing in January of 2001 for a violation of Arizona's Implied Consent Law. Plaintiff's driving privileges were reinstated following the suspension period; however, the Defendant Arizona Dept. of Transportation discovered that Plaintiff's driving privileges had been revoked in the State of Florida, and the Arizona Dept. of Transportation revoked Plaintiff's driving privileges on May 15, 2002, based upon the Florida action. Plaintiff thereafter requested a hearing which was held before the Honorable Rosario (Roy) J. Cirincione, Administrative Law Judge, on October 9, 2002.

There is no question but that the Florida suspension and revocation action occurred as the result of several violations that occurred within the State of Florida, committed by the Plaintiff while he possessed a valid Florida driver's license. Plaintiff contends that Florida lacked jurisdiction because, at the time it issued its suspension/revocation order, the Plaintiff resided in Arizona and Arizona was his home state. This argument is without merit, for if this Court accepted Plaintiff's position, then the State of Florida would be deprived of authority to apply its "habitual traffic offender statute" based upon driving that occurred within its state.

It appears that the ALJ's decision was based upon the authority granted by A.R.S. Section 28-3306(A) permitting suspension or revocation (in Arizona) of the license of one who has committed offenses in another jurisdiction that would be a basis for revocation or suspension within the State of Arizona. This statute fits precisely those facts before the ALJ and this court.

³ *Siler v. Arizona Dept. of Real Estate*, 193 Ariz. 374, 972 P.2d 1010 (App. 1998).

⁴ *Schade v. Arizona State Retirement System*, 109 Ariz. 396, 398, 510 P.2d 42, 44 (1973); *Welsh v. Arizona State Board of Accountancy*, 14 Ariz.App. 432, 484 P.2d 201 (1971).

⁵ *DeGroot v. Arizona Racing Com'n.*, 141 Ariz. 331, 336, 686 P.2d 1301, 1306 (App. 1984).

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The ALJ appropriately noted in his decision that the “Driver’s License Compact” adopted by the State of Arizona⁶ permits the Plaintiff to re-apply for driving privileges in Arizona after twelve (12) months from the revocation or suspension of his license. The Plaintiff is not without an appropriate remedy in this case for his poor driving, and the subsequent revocation/ suspension of his driver’s license.

This Court finds the decision of the ALJ and Arizona Dept. of Transportation to be supported by substantial competent evidence from the record. I find no abuse of discretion, that the decision was not arbitrary or capricious, nor is it contrary to the law.

IT IS ORDERED affirming the decision of the Arizona Dept. of Transportation in this case.

IT IS FURTHER ORDERED denying all relief as requested by the Plaintiff in his complaint.

IT IS FURTHER ORDERED terminating the stay previously issued by this court.

IT IS FURTHER ORDERED directing counsel for the Defendant to prepare and lodge a judgment consistent with this minute entry opinion no later than March 1, 2004.

⁶ See A.R.S. Section 28-1852.
Docket Code 019